

MAR 17 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE ARREOLA NAVARRO, aka Jose
Luis Montes De Orca,

Defendant - Appellant.

No. 04-10092

D.C. No. CR-03-00248-WHA

MEMORANDUM* and ORDER

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Submitted March 8, 2006**

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Jose Arreola Navarro appeals from the 70-month sentence imposed following his guilty plea conviction for illegal reentry following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory. “We have held that ‘where the district court did not treat the sentencing guidelines as advisory but the defendant's sentence was not enhanced by extra-verdict findings,’ a nonconstitutional sentencing error has occurred.” *United States v. Brown*, 417 F.3d 1077, 1080 (9th Cir. 2005) (per curiam), *citing United States v. Ameline*, 409 F.3d 1073, 1084 n.8 (9th Cir. 2005) (en banc). Appellant shall notify the court within 14 days of the filing date of this memorandum disposition if appellant wants to pursue an *Ameline* remand. *See id.* at 1084. If appellant does not respond to this inquiry, the district court’s sentence shall be affirmed.

BRIEFING ORDERED.